November 2, 2020

Everett City Council Members

Thank you for all your efforts on the City Council. You have been reviewing a lot of topics in an exceedingly difficult time. These comments are in addition to my previous comments to you.

Hearing Examiner should continue to be the decision maker for larger shoreline permits.

I am supportive of the proposal to have the Hearing Examiner continue to be the decision maker for larger shoreline permits - Chapter 15.02 (Local Project Review Procedures Title 15) This is the right place for these decisions to be made with a public hearing for citizens to be able to comment and not be administratively decided without a public hearing.

Not requiring notice for projects where the developer proposes to modify development standards and the modification of development standards.

I am opposed to the easy modification of standards. I believe a community should establish its standards and live by them. My experience is those who do not want to follow the standards and modify them are usually wanting to develop a very poorly designed project. See my earlier comments on the details asking you to reject the ability to modify standards in my October 5, 2020 note.

If you wish to allow the modification of standards there should be a requirement that the public and neighbors are informed and notice is given. This is what was communicated to the Planning Commission in August and September by staff. I have attached Mary Cunningham's October 6 note to you which goes into detail on this topic.

Code Provision 19.06.110 Density and Lot Size – Attached Housing in Single-Family Zones

The proposal before you allow for lots of any size so the published minimum lot size in single family zones is not a minimum lot size standard.

Make the following changes to Table 6-7

In the R-1 zone Minimum Lot size part of the table here is a change which is needed:

No lot shall have an area less than four thousand (4,000) square feet. ~~Each lot may be less than six thousand (6,000) square feet; p~~Provided, that twelve thousand (12,000) square feet is provided for both dwelling units

In the R-2 Zone section same table make the following change:

The minimum lot area for a two-unit dwelling is 7,500 square feet; ~~There is no minimum lot area for individual lots within the development.~~ the minimum lot size in any development is 3,000 square feet.

19.22.100 Modification of Building Heights

I still believe there should be no ability for applicants to propose a different way of measuring building heights as proposed in the new code. I am not in agreement with the staff position on

this topic and still think the proposal by the staff is not the way to go and is a problem. The city needs to establish the way heights are measured and applicants should work within that direction and framework. So, in 19.22.100 Building Height Standards that can be modified **remove 1. B. How heights are measured, provided, however, that a view analysis is required if visible from adjoining properties and anywhere else this language is located.** This language opens all kinds of options for determining how heights are measured which would allow buildings which would be out of scale in neighborhoods. This would allow for higher heights than the existing code in single family zoned areas which is counter to the language noted in the Citizen Participation Plan.

Thank you for your consideration of my comments.

Sincerely

David Koenig

Copies to: Mayor Franklin, Nick Harper, David Stalheim

October 6, 2020

To City of Everett City Council

Re: Rethink Zoning (CB 2009-51)

I submitted two letters to the Planning Commission re: Rethink Zoning (8/13/2020 and 8/30/2020). I appreciate staff's changes to address some of my comments, explanations for my questions, as well as the explanations provided as to why staff wants to reduce public notice and change planning review processes (Memos from David Stalheim and Dan Eernissee to Planning Commission dated August 28, 2020). However, I still disagree with some of their positions. This letter describes my greatest concerns with the proposed changes and my request for amendments to the proposal.

1. **The Hearing Examiner should continue to be the decision maker for larger shoreline permits - Chapter 15.02 (Local Project Review Procedures Title 15, Article 1)**

Under the proposed regulations, the Hearing Examiner would no longer make decisions on shoreline permits that are more than one acre in size, unless they require a conditional use permit or variance, or exceed height limits in Map 22-1 in EMC 19.22.150. Instead, the Planning Director would make the decision on the application.

Current codes require that the Hearing Examiner make decisions on projects greater than one acre in size. The independent Hearing Examiner process is important for a few reasons:

- Most of Everett's shorelines are designated as Shorelines of Statewide Significance by the Shoreline Management Act. They benefit users throughout the state, not just local residents or nearby property owners. All residents of the state have an interest in ensuring that development of shoreline areas provide a public benefit, such as public access – either on or off site.
- City staff are not infallible in applying code requirements to developments. Staff may miss code required standards, including those that provide a public benefit to shoreline areas of the state.
- City staff frequently receive pressure from developers and City Administration to ignore or modify development standards. The developer meets frequently with staff and the public interest is not always served in these negotiations. The balance of power can be shifted if there is an independent decision-maker (hearing examiner) who is considering both the developer and public interest in determining project requirements.

The Port of Everett's Bay Wood project is a recent example of a project that required a Hearing Examiner public hearing under the existing code, but would not require a public hearing under the proposed code. It is over 1 acre in size and staff determined it did not require a conditional use or variance. The property is located at the mouth of the Snohomish River just below Legion Park. The area is designated as a Shoreline of Statewide Significance under the State Shoreline Management Act.

I commented on the proposal during the public comment periods. City staff were not appropriately applying the code as it related to public access on the site. After I submitted comments, the City Attorney and Planning Director agreed with my interpretations of the code regarding public access. The code clearly required a public access trail along the entire edge of the property, while the Port was only proposing a small section of trail. After I submitted comments, Planning's staff report stated a paved 10 foot wide public access trail was required around the entire property edge, the same as that required of other shoreline developments in the past (such as the Port of Everett Riverside Industrial Park). But the final staff recommendation was very vague on trail requirements; and at the Hearing Examiner Public Hearing for the proposal, the City wouldn't commit to any width of trail, and said the issue could be resolved at the permit stage, which would not involve any public notice or involvement. This change in position was based on pressure from the Port and City Administration, and was clearly not in the public's interest. At the hearing, the developer stated they didn't think the trail was required, but would voluntarily provide a minimal trail. The Port/developer had submitted documentation showing a 3 foot wide trail could meet ADA standards, but said they might provide up to a 5 foot wide trail.

Based on comments from a wide variety of citizens, the City's Hearing Examiner required public access to a lesser standard than what I thought was required by code, but beyond that which the City staff recommended and would have required if they were the decision-maker (and clearly beyond what the developer wanted.). The Hearing Examiner's decision required an 8 foot wide ADA accessible trail around the entire site. **This outcome provides a much greater benefit to the public than the small trail section that was proposed by the Port and unknown width that the City would require at the building permit stage.**

This development also shows the impact that public comment can have. If I had not commented, the project would have only provided a short spur trail to a viewpoint on the north side of the site. But it resulted in a requirement for a continuous trail along the perimeter of the entire site as required by code!

In summary an independent hearing examiner decision process can modify the balance of power between the public and developer. This is extremely important for shorelines of statewide significance and ensuring that developments on shorelines provide public benefits. Shoreline resources are very limited, and maintaining current standards should not have significant impacts on staff resources. Most of the developments in shoreline areas are large projects, and planning permitting costs are an extremely minor percentage of development costs. The Hearing Examiner review process should be able to be completed in 120 days after an application is complete. **The Hearing Examiner should continue to be the decision maker for larger shoreline permits.**

2. Eliminating SEPA Reviews (and Associated Public Notice) for a Large Number of Projects and Not Requiring Notice for Projects Where the Developer Proposes to Modify Development Standards (Local Project Review Procedures Title 15, Article 1 and SEPA Chapter 19.43)

Current codes require public notice for developments in Metro Everett that exceed 60 units. SEPA (with public notice) is required for properties outside Metro Everett that exceed 60 units. The proposal eliminates the notice for projects in Metro Everett. It also raises the SEPA

exemption level from 60 to to 200 units in the Urban Residential 4 (UR4) zones and Mixed Urban (MU) zones, and exempts any size Mixed-use development in Metro Everett, Mixed Urban (MU) or Business (B) zones. No public notice would be required for those developments.

In my August 14, 2020 letter to Planning Commission, I expressed my opposition to those changes for a variety of reasons – mainly that providing public notice helps to develop an informed public who can bring new information to the review, and to provide a check on pressure that developers put on staff to modify or ignore development regulations.

In my August 14, 2020 letter to Planning Commission I also commented that I support the residential development standards in Chapter 19.08. But the Planning Director is allowed to modify the standards without any public notice. When the public sees code standards, there is an expectation they will be met. Then when they see a final development that doesn't meet the standards, they lose faith in local government. If they receive notice before the development occurs, have an opportunity to understand why the modification is proposed, and have an opportunity to comment, they are more likely to trust local government and the development may be modified to address any public concerns with the modification.

In his August 28, 2020 memo to Planning Commission David Stalheim justifies eliminating the SEPA review process and public notices with a variety of arguments. These include:

1. Public participation in land use should be focused on the writing of comprehensive plans and development regulations.
2. Site-specific land use permit applications should be decided based on development standards and regulations set by policy makers.
3. ……..
8. **Policy requires that the public and neighbors are always informed when a deviation, or modification of development standards is proposed. …..Where the code allows modification of development standards, the process requires notice to adjacent property owners and posting of the site.**

The September 11, 2020 Response to Public Comments on Rethink Zoning responded to my comment regarding providing public notice when residential development standards are proposed to be modified by stating **"Staff agrees that modification of most standards should require public notice. A change in both 19.08 and 15.02 are proposed."**

Based on those statements, I assumed that some of my issues were resolved, but then I reviewed the final document in front of City Council. I found that the proposed code clearly does not require public notice for many modifications to development standards, including a large number of the residential development standards in 19.08.

> Section 15.03.060 Modification of Development Standards states.
> A. Overview. Throughout this title, the planning director, city engineer or their designee ("director") may be authorized to approve project-specific modifications of the standards in this title.
> B. Review Process
> 1. An applicant shall submit a request for modification, providing such information as is required by the director, including application fees.
> **2. Where this title authorizes the director to modify development standards, the review process shall be Review Process I (REV I) unless otherwise indicated. *(No public notice required.)***

3. If the director determines that notice to contiguous property owners should be provided regarding a request to modify development standards, the director may require the proposed modification to be reviewed using a higher level of review process than otherwise required.
4. See EMC 15.02 for notice and procedures for various review processes

The changes made to Chapters 19.08 and 15.02 (based on my comment on the Residential Design Standards) only require public notice for modifications to lot width and open space standards. They do not require public notice for modifications to development standards for facades, windows, doors, roof, entrance or siding or for landscape requirements:

19.08.300 Administrative Modification of Development Standards
A. General An applicant may propose and the planning director, using the review process described in Title 15, Local Project Review Procedures, may allow an applicant to deviate from the development standards, provided the proposal satisfies the evaluation criteria of this subsection. In evaluating such a proposal, the planning director, using the criteria in subsection (C) below, shall determine if the alternative design or plan provides superior results to that which would be required by compliance with the development standards of this chapter.
B. Development Standards that can be modified
1.The following development standards in this chapter can be modified:
a. Any design or development standard regarding façade, window, door, roof, entrance or siding requirements.
b. Lot width requirements (REV II).
c. Landscape requirements.
d. Minimum size, location and design standards for on-site open space (REV II).

This is consistent with Section 15.02.070 Review Process II that only provides public notice for some modifications.

Section 19.09.100 (Multifamily Development Standards) allows the Planning Director to modify standards for building modulation, facades of dwellings and garages, building entrance requirements, and required outdoor and common areas. **No public notice is required.**

Section 19.12.300 (Building Form and Design Standards for nonresidential uses in the UR3, UR4, NB, B, MU, LI1, LI2, HI zones) allows the Planning Director to modify development standards for building form, structured parking, weather protection, building transparency, and special design standards. **No public notice is required.**

I appreciate that the code does require Review Process II and public notice for deviations from Historic Overlay Zone standards and neighborhood conservation guidelines. (Though the proposal reduces proposed notice distance to 150' of the project, rather than the current code requirement of 500'. But posting signs on the site will still be required.)

The City argues that provisions in the code allow the planning director to require the permit application to be reviewed under a higher level of review process if the director determines that notice to contiguous property owners should be provided regarding a land use decision (15.02.060.B.6 and D.6). But I foresee that will never happen.

I request that the City implement its policy and require public notice (at least Review Process II) when modifications are proposed for any of the residential and nonresidential

development standards. The standards are very flexible. When a developer proposes something that is outside of what the public expects can occur, public notice should be provided. And any public notice should clearly state what the proposed modifications are.

Requiring notice of proposed modifications is very consistent with what is stated in David Stalheim's August 28, 2020 memo to Planning Commission, that

1. Public participation in land use should be focused on the writing of comprehensive plans and development regulations.
2. Site-specific land use permit applications should be decided based on development standards and regulations set by policy makers.
8. **Policy requires that the public and neighbors are always informed when a deviation, or modification of development standards is proposed.**

If developers comply with all the standards that citizens expect to be implemented based upon citizen involvement during the writing of regulations, they would have a very easy permitting process. But if a developer wants to modify standards, the City should require public notice (Review process II) and allow the community an opportunity to comment. This should not add more than 4 weeks to the review process, and comments could result in a better project.

Thank you for considering my comments. And thank you for your work on the Council.

Mary Cunningham
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cc: David Stalheim